IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Raghukul Vikas Samiti Vs. State of Raj., & Ors.

S. B. CIVIL WRIT PETITION NO.6491/1991
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Date of Order : 7th August, 2007.

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

REPORTABLE

Mr.CS Kotwani, for the petitioner.
Mr.SN Tiwari, Dy.GA, for the respondent- State.
Mr.KR Choudhary, for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

The petitioner being the society through its Secretary preferred this writ petition to challenge the orders passed

by the Board of Revenue dated 24th July, 1989 and for quashing of the notices issued under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as the Act of 1956) issued by the Tehsildar, Barmer in pursuance of the order of the Board of Revenue dated 24th July, 1989 by which the Tehsildar, Barmer demanded possession of the property in dispute from the members of the petitioner society back.

Brief facts of the case are that one Kesrimal claimed that he is owner of the property by virtue of the Patta in his favour by the erstwhile Jagirdar of the Barmer. The land is 1000 *Hattha x* 1000 *Hattha* (corresponding to 10834'x10834'). The neighbourhood of the property is mentioned in the Patta, copy of which has been palced on record by the petitioner as Annex.20. The said Kesrimal found that in the revenue record, the name has wrongly been entered as agricultural land and in the name of State whereas according to said Kesrimal, the land was Abadi land and covered by Patta (Annex.20). The said Kesrimal submitted an application which appears to be about the

year 1967 or before that before the SDO, Barmer. Before the SDO, Barmer the applicant Kesrimal produced five witnesses apart from giving his own statement and produced Patta as Ex.1. He also stated that he even sold the part of the land covered by the said Patta to one Ummed Singh by registered sale deed Annex.3 and part of the land to Khangar Singh vide Annex.2. His five witnesses also stated that the land was Abadi land and covered by the Patta. Kesrimal also produced other persons, who purchased the part of the land from Kesrimal vide registered sale deeds Ex.A/4, A/5 and A/6. On the basis of these evidence, the Tehsildar passed the order on 2.8.1967 and ordered for correction of the entry in the revenue record by mentioning the land to be Abadi land.

It appears that in pursuance of the said order dated 2.8.1967, the revenue authorities made relevant entires in the revenue record, namely, Jamabandi and entered the name of said Kesrimal as land holder for the land of Khasra no.1652/1 and 1665/1. The nature of the land was also recorded as Abadi land. The said Kesrimal died and,

thereafter, the name of sons of Kesrimal were also entered in the Jamabandi by order of the Gram Panchayat, Barmer dated 28th Oct., 1971. The position continued and further sales were affected by the Kesrimal's decedents time to time. It appears from the order of the District Collector dated 2nd May, 1980 that a notice under Section 80 was served upon Kesrimal's decedents upon the Forest Department about their interference in the land of the Kesrimal's decedents and claiming damages for loss caused to the property of the decedents of Kesrimal. It appears that in spite of the fact that notice under Section 80 was served upon the Forest Department in the year 1972, one application under Section 82 of the Act of 1956 was submitted before the District Collector, Barmer by the Dy. Conservator of Forests, Barmer raising grievance agaisnt the entry in the name of Kesrimal and against recording th land to be Abadi land in place of Government agricultural land. It may be worthwhile to mention here that it was not the case of even the Forest Department that land was Forest land. Be that as it may be, the said application was entertained by the learned District Collector filed under

Section 82 of the Act of 1956 after about 13 years from the date of the order passed by the SDO, Barmer dated 2.8.1967. This application was also entered after almost 8 years from the service of notice upon the Forest Department sent by the land holders as alleged land owners. The learned District Collector opined that the SDO had no jurisdiction to order change in revenue record when settlement operations were not in operation. According to learned District Collector, Barmer if the alleged land owners were owner of the property then they could have filed a regular suit for declaration of their title and also for seeking relief of correction of entires in the revenue record. The learned District Collector was of the view that the SDO had no jurisdiction to convert the land from agricultural to Abadi. It was further observed that the Patta,which was based of the title of the Kesrimal was not registered one. In view of the above reasons,the learned District Collector made a reference to the Board of Revenue for setting aside the order of the SDO dated 2.8.1967.

The Board of Revenue accepted the reference made by

the District Collector, Barmer under Section 82 of the Act of 1956 vide order dated 24.7.1989. The Board of Revenue upheld the view taken by the learned District Collector and observed that the order dated 2.8.1967 was passed by the SDO without hearing the State representative and further the SDO had no jurisdiction to allow conversion of land from agricultural to Abadi land. The Board of Revenue was also of the view that rights could have been determined only by filing proper suit for the purpose by the alleged land owners of the property. In view of the above reasons, by impugned order dated 24.7.1989, the order passed by the SDO, Barmer dated 2.8.1976 was set aside.

In consequence of order dated 24.7.1989, the Tehsildar Barmer issued several notices to the persons, who claimed that they have purchased the part of the property from the owners of the property and demanded back the possession of the property from those occupants by registering a case under Section 91 of the Act of 1956. The Tehsildar after notice, passed various orders for eviction of persons, who are in possession of the land in question.

Copies of these orders dated 18th March, 1991 have been placed on record by the petitioner.

The petitioner's case is that petitioner is a society and its members are the purchasers of the plots from the persons who derived title from Kesrimal and his successors. It is stated that some of the persons purchased property as back as on 13th July, 1946 and the sale deeds were registered thereafter for several plots also in different years. Those all persons are in possession of the land in dispute and when some purchasers applied for grant of permission for construction of the building then the Municipal Board, Barmer dismissed those applications vide order dated 22nd Oct., 1983 and 28th Oct.,1983. Some of the other persons who purchased the plots directly from the Ex-Jagirdar applied for permission for construction of residential houses before the Municipal Board, Barmer and those permissions were also refused by the Municipal Board, Barmer. Being aggrieved against the above orders, appeals were filed against the order of the Executive Officer, Barmer before the District Collector, who set aside

the refusal order passed by the Executive Officer and remanded the matter back to the Municipal Board, Barmer. Copy of this order of the District Collector dated 14th Oct., 1996 has been placed on record by the petitioner. It is stated that those files are yet pending before the Municipal Board, Barmer. It is also made clear that the property is Abadi land and is being used as Abadi land by various persons who could raise construction of their houses long ago and one of the example was given of Nemichand who constructed his house in the year 1975. It is submitted that the order passed by the Board of Revenue is in fact against all the persons who have purchased the property from erstwhile Jagirdar or from Kesrimal or from his successors and this transaction is going since the year 1946 and onwards, none of the persons in occupation was ever given any notice by any revenue authority objecting about their possession on the land in question, but in pursuance of the order passed by the Board of Revenue dated 24.7.1989 the members of the petitioner society are being sought to be evicted from the land in dispute.

It is submitted that the order of the District Collector dated 2.5.1980 as well as the order of the Board of Revenue dated 24.7.1989 are absolutely not only illegal but null and void as the same have been passed against the persons who purchased the properties much before the impugned orders were passed and who are in actual possession of the property in dispute, but they have not been given any opportunity of hearing as they were not made party in those proceedings. It is submitted that even if the order dated 2.8.1967 passed by the SDO, Barmer could have been set aside under Section 82 by the Board of Revenue then that could have been done only within reasonable period of time and that reasonable time could have been only two years from the date of passing of the order of the SDO, Barmer. It is also submitted that the revenue authorities never objected against the order dated 2.8.1967 despite their having knowledge as the orer dated 2.8.1967 was accepted by the revenue authorities and the order has already been implemented by making correction in the entries in the revenue record. Therefore, it cannot be said that the revenue authority had no knowledge of the

order dated 2.8.1967 from the time it was passed. It is also submitted that the order dated 2.8.1976 is only an order to make correction in the revenue record and is not an order granting any right, title or interest in the property to the applicant Kesrimal. The applicant Kesrimal clearly submitted that he is owner of the property by virtueof Patta issued to him by Ex-Jagirdar and he placed on record the relevant document as well as produced witnesses to prove his possession and also the fact that land was being used as Abadi land. Learned counsel for the petitioner further submitted that it was the choice of the Government to keep their record correct by making entries corrected or not but because of wrong entry in the revenue record the said Kesrimal could not have been evicted form the land in dispute and, therefore, the State Government never initiated any proceedings for eviction of the said Kesrimal from the land in dispute either before 2.8.1967 or thereafter.

All these broad facts were ignored by the District Collector and the Board of Revenue. It is also submitted

that the learned District Collector and the Board of Revenue proceeded on the assumption that the SDO has passed the order of conversion of land from agricultural to Abadi land, but in fact, no such order was passed by the SDO. It passed the order of correction of entires in the revenue record. The conversion of land is different than the making of correction in the entry in the revenue record. It is also submitted that it is the admitted case of the respondents that the property of the Patta has already been sold to several persons and who have raised construction over the property. Therefore, in the facts of the case, no purpose could have been achieved by making any change in the revenue record alone.It is also submitted that the State Government itself lost its any right to take possession from the original land holder or the persons derived title from the land holders by virtue of lapse of time.

Learned counsel appearing for the State as well as Municipal Board, Barmer vehemently submitted that there is no construction on any of the land covered by the Patta. It is also submitted that if some construction has been

raised by someone then that was in violation of the Municipal Law and because of that construction, no right accrues in favour of any of the person who is claiming title unless he proves the title. It is also submitted that the order dated 2.8.1967 is void-ab-initio because of the simple reason that said order was passed without giving an opportunity of hearing to the State Government. The State was necessary party in the matter of even correction of entry in the revenue record. The District Collector and the Board of Revenue both clearly held that the order dated 2.8.1967 was passed without affording an opportunity of hearing to the State Government. In view of the above also, the Board of Revenue was right in setting aside the order dated 2.8.1967. Further, it is settled law that any correction in entry could have been made by the revenue authorities only during the currency of settlement operation and at the time when the order was passed by the SDO, no settlement operations were going on, therefore, the order of the SDO was wholly without jurisdiction.

Learned counsel for the respondents further submitted

that the land was transferred to the Municipal Board by the State Government and it was recorded as Government land form time of settlement and it continued before the Kesrimal got the land mutated in his name. Learned counsel for the respondents further submitted that there is no limitation prescribed for making reference under Section 82 of the Act of 1956 against any order passed by the Subordinate Revenue Officer and in several cases, the reference was accepted after decades by the Board of Revenue and those orders were upheld by this Court. In view of the above reasons, merely on the ground of delay, the order dated 2.8.1967 cannot be sustained. Learned counsel for the respondents also submitted that the Patta produced by Kesrimal was not registered Patta and, therefore, by that Pata no title passed on to alleged purchaser of the land and, therefore, there was no title vesting in Kesrimal so that he could have transferred it to anybody else. Learned counsel for the respondents further submitted that the writ petition deserves to be dismissed because of the simple reason that writ petition has been filed by a society which is not a registered society and such

society cannot file the writ petition unless it is registered one. It is also submitted that the order of the Board of Revenue has not been challenged by Kesrimal and his successors. Learned counsel for the respondents further submitted that even if the Municipal Board has granted permission to raise construction to someone then that cannot entitle other persons to obtain the permission if they are not entitled to. Learned counsel for the respondents also submitted that the property is not identifiable and, therefore also, the SDO committed error of law by making change in the revenue record.

I considered the submissions made by learned counsel for the parties and perused the record also.

So far as the objection of the respondents that the writ petition is not maintainable as the society is not registered, cannot be accepted at this belated stage because of the simple reason that the writ petition was filed as back as in the year 1991 and interest of large number of persons are involved. The members of the petitioner society

purchased the properties on various dates by registered sale deed from the year 1946 to 1978. Purchases have been fully disclosed in the schedule appended to the writ petition, contrary to it, the orders sought to be challenged by the petitioner if allowed to stand then that will affect the rights of large number of persons who purchased the property from a person who claimed that property is his ownership property by virtue of Patta of Smwat Year 1963 corresponding English Calender Year 1906. It appears that looking to the threat of their dispossession, the purchasers of the property decided to constitute a society to safeguard their rights. The order of the Board of Revenue is being challenged by these persons being successor in interest from the original respondents, who were party in the proceedings under Section 82 of the Act of 1956. The said Asu Lal and Bhori Das might have lost their interest to challenge the order dated 24.7.1989 because they sold the property to several persons before the order dated 24.7.1989 passed by the Board of Revenue and even before the learned District Collector decided to refer the matter to the Board of Revenue vide order dated 2.5.1980.

Therefore, in totality the interest of large number of persons cannot be jeopardized because of such a technical ground and the writ petition may be treated for and on behalf of these individuals whose particulars have been shown in the schedule appended with the writ petition. Therefore, the objections of the respondents against the maintainability of the writ petition is rejected.

It has been laid down by this Court in various judgments that though there is no limitation prescribed for making reference under Section 82 of the Act of 1956 but even then the reference can be made only within the reasonable period of time unless a case of committing fraud is made out. In this case, the said Kesrimal only submitted an application before the SDO so as to produce documentary evidence in the form of Patta Ex. A/1 and the sale deeds Ex.2 to 6 to show that not only he is having title in his favour but he is in possession of the property in dispute and also exercise his right as owner of the property and executed various sale deeds and gave possession of the part of the property to those purchasers also. Kesrimal's request was only that entires may be corrected in the

revenue record also for avoiding any further complication in future. This application was accepted by the SDO vide order dated 2.8.1967. The order dated 2.8.1967 cannot be said to be passed without affording opportunity of hearing to the State because it came to the knowledge of the State representative – the Tehsildar, Patwari as well as in the knowledge of the Gram Panchayat. The order dated 2.8.1967 was accepted by the revenue authorities and the revenue record was corrected by recording the name of Kesrimaland and by recording the land as Abadi land, which appears to be in the year 1967 itself. Not only this after the death of Kesrimal,his successors applied for mutation in their name and their name have been entered in the revenue record and particularly in the Jamabandi by the order of the Gram Panchayat. Even the State authorities as well as Gram Panchayat had no grievance till the Dy. Conservator of Forest Department, Barmer submitted an application before the District Collector, which appears to be made the year 1980. The said Dy. Conservator of Forest also submitted the application only when the Forest Department received a notice under Section 80 CPC from

the successors of Kesrimal in the year 1972 by which the land owners claimed damages from the Forest Department on account of their interference in the land in question. Strangely, the notice which was served upon the Forest Department in the year 1972 was acted upon by the Forest Department after about 8 years and that too, when Forest Department itself is not claiming to be the land owner nor the State Government said that the land is Forest land. Therefore, the order of the District Collector making reference dated 2.5.1980 and the order passed in consequence thereof by the Board of Revenue dated 24.7.1989 deserve to be set aside only on this count of inordinate delay, laches and because of the reason of acceptance of the order by he State by acting upon the order of the SDO dated 2.8.1967.

The learned District Collector as well as Board of Revenue further committed serious error of law in setting aside the order making the correction in the revenue record without examining whether the possession of the land can be taken from the persons who are in possession of the

property since 1946 merely by passing the order dated 24.7.1989 cancelling the change made in the entires in the revenue record alone. Making entries in the revenue record itself neither creates an right nor extinguishes any right or title. Therefore, because of the order dated 2.8.1967 alone, no title has been created in favour of Kesrimal if it was not there as pre-existing right nor the State can claim title merely because of any change made in the revenue record by the order of the Board of Revenue dated 24.7.1989. The State cannot acquire any title over the property if it was not there. Therefore, by virtue of order dated 24.7.1989 the State Government cannot get any right to take possession of land after the expiry of period of limitation and without proof to negative the title of the Kesrimal. It appears that if Kesrimal would not have applied for making correction in the revenue record, the State would not have objected to and if Kesrimal's successor executed various sale deeds without there being any objection of the State, in that situation also, no purpose could have been achieved by setting aside the order of the SDO dated 2.8.1967.

So far as contention of learned counsel for the respondent – State that the land was handed over to the Municipal board is concerned, for that purpose, it will be worthwhile to mention here that the Municipal Board also did not choose to challenge the Patta of Kesrimal or order passed by the SDO,Barmer dated 2.8.1967. At this place it may be again mentioned here that the action was taken because of the moving application by the Forest Department of the State, which itself is not claiming any right, title or interest in the property in dispute and State has not moved any application for cancellation of the entires made in the revenue record and State simply wants to take benefit out of the action initiated by un-interested person/party. In that situation, the Municipal Board's contention that the property vests in Municipal Board cannot be accepted.

So far as reasons given by the District Collector as well as Board of Revenue for allowing reference are concerned, they are also devoid of any lawful reason because of the simple reason that learned District Collector as well as Board of Revenue proceeded on the assumption

that the SDO has passed the order dated 2.8.1967 changing the agricultural land into Abadi land whereas factually it is wrong. By order dated 2.8.1967 the land has not been converted but has been recognized as Abadi land means that land was Abadi land prior to its recognition. The conversion of land makes the land of different class or category or nature from the date of conversion. In this case, Kesrimal's case was that land was Abadi land and that was accepted.

Even if change in revenue record could not have been made by the SDO as there was no settlement operation was going on even then no useful purpose giving no relief to anybody making wrong entries in revenue record to continue that too after several decades, the orders acted upon cannot be set aside under Section 82 of the Act of 1956. Further, it will be worthwhile to mention here that some facts mentioned in the order of the District Collector dated 2nd May, 1980. The learned District Collector, Barmer took note of the arguments advanced by Government Counsel. In para no.13 at page no.3 of the order, the learned District Collector took note of the report of the

Tehsildar dated 7.8.1972 wherein the Tehsildar mentioned that there are no marks on spot which can differentiate the Abadi land from agricultural land. In this very para the learned District Collector observed that the learned member of the Board of Revenue also inspected the site on 24th March, 1971 and has expressed his opinion that order of the SDO does not mention under which power he has passed the orders of conversion of agricultural land. If these facts are correct then again the validity of the impugned order is doubted because as back as in the year 1971 no reason was mentioned for not making reference at that time. Obvious reason may be that the revenue authority and particularly the concerned Tehsildar himself was in doubt about the land being agricultural land, therefore, in its report dated 7.8.1972, the Tehsildar mentioned that there are no marks on spot which can differentiate Abadi land from agricultural land.

In view of the above reasons, the writ petition deserves to be allowed, hence allowed. The order of the Board of Revenue dated 24.7.1989 is set aside and the

proceedings initiated for eviction of the members of the petitioner society and orders passed under Section 91 by the Tehsildar, Barmer which were passed because of the order of the Board of Revenue dated 8th March, 1991 (Annex.10 to 19) are quashed and set aside.

(PRAKASH TATIA), J.

c.p.goyal/-